

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of GEORGE M. PRATT and U.S. POSTAL SERVICE,
MIAMI AIR MAIL FACILITY, Miami, Fla.

*Docket No. 97-2617; Submitted on the Record;
Issued May 17, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained a herniated lumbar disc or degenerative disc disease in the performance of duty on or before July 24, 1995 as alleged.

On August 30, 1995 appellant, then a 40-year-old distribution clerk, filed a notice of occupational disease alleging that he had sustained degenerative disc disease in the performance of duty on or before July 24, 1995. He described a worsening pain in his left side first experienced while working at the foreign mail conveyor belt. On the reverse of the form, Betty Nesbitt, an employing establishment supervisor, indicated that appellant first reported the alleged condition to her on June 1, 1995. Appellant stopped work on July 24, 1995, sought emergency room treatment on August 3, 1995, was off work for approximately three months, then returned to modified duty.

In a June 22, 1995 report, Dr. William Campbell, an attending Board-certified internist, related appellant's account of a two-day history of left hip pain, "no trauma," and diagnosed a back strain. On June 30, July 7, 24 and 27, 1995 follow-up notes, Dr. Campbell noted appellant's continuing complaints of worsening left flank and back pain, and diagnosed sciatica, rule out herniated nucleus pulposus.

In an August 21, 1995 report, Dr. Jose L. Joy, an attending Board-certified neurosurgeon, stated that approximately one-and-a-half months before, "while at work, [appellant] developed pain in the left flank area which he thought was a kidney infection or stone. He told his supervisor that he was having this problem and continued working." The following weekend, appellant reported greatly increased pain radiating in to the left lower extremity such that "he could barely stand up or walk," at which time he sought emergency room treatment. Appellant then underwent a lumbar magnetic resonance imaging (MRI) scan, performed by Dr. Campbell, which revealed a herniated disc. Dr. Joy reviewed Dr. Campbell's MRI and diagnosed an L3-4 disc herniation "on the left with marked neural foraminal encroachment," degenerative changes at multiple levels and congenital stenosis. On examination, Dr. Joy found severe pain in the low back radiating into the left lower extremity to the knee, with significant motor weakness

interfering with walking and standing. Dr. Joy opined that the herniated disc was “related to [appellant’s] work since his symptoms began while he was working.”¹

In a December 4, 1995 letter, the Office advised appellant of the additional medical and factual evidence needed to establish his claim, including a description of occupational and nonoccupational activities, and an additional, rationalized report from his physician addressing how the claimed degenerative disc disease was “causally related to [his] work environment.”

In a December 25, 1995 letter, appellant asserted that his job required frequent pushing and pulling of mail containers weighing more than 200 pounds, as well as other types of heavy lifting, noting that he was the only mailhandler assigned to his work area during his tour of duty. Appellant stated that on an unspecified date, he “felt a pain in [his] left side” while dumping parcels on the “foreign belt.” When the pain worsened, he sought medical treatment, culminating in an emergency room visit on August 3, 1995 at which time he was diagnosed with a herniated lumbar disc. Appellant also noted that he was diagnosed with “herniated disc disease due to job related activities around 1992,” but did not specify the location of that disc herniation, or provide related medical reports.

By decision dated May 2, 1996, the Office denied appellant’s claim on the grounds that fact of injury was not established.² Appellant disagreed and requested an oral hearing, held March 24, 1997. At the hearing, appellant testified that on June 17, 1995, he experienced back pain while pulling a container of mail weighing between 600 and 700 pounds. Appellant asserted that he verbally reported the incident to Ms. Nesbitt, his supervisor, and continued working. Appellant recalled that he thought his symptoms might be related to a kidney problem, but when his symptoms worsened he sought treatment and was diagnosed with a herniated disc. Appellant alleged that he reported the employment incident to Dr. Campbell although the doctor did not mention the incident in his notes. He proposed that Dr. Joy did not mention the June 17, 1995 incident as he was treating appellant primarily for the preexisting neck condition, and not a low back problem.

At the hearing, Elisa McCloskey, one of appellant’s coworkers, testified that on an unspecified date, she saw appellant “ma[k]e a face” as he was “pulling a wire cage.” She asserted that when she asked appellant what had happened he grabbed his lower back and replied, “I think I must have pulled something.” Appellant also submitted a written statement from coworker Tony Flores, who stated that in June 1995, he was “in the area at the time [appellant] complained

¹ Appellant submitted May and June 1995 reports related to a preexisting cervical spine condition with surgical fusion by Dr. Joy. These reports do not mention a lumbar injury or condition.

² In July 1996 appellant was involved in a nonoccupational motor vehicle accident in which he sustained neck and wrist injuries, and a worsening of his low back symptoms.

about getting a pain in his back while he was moving some mail equipment.”³ Following the hearing, appellant submitted additional medical evidence.

In a March 27, 1997 report, Dr. Campbell noted first treating appellant on June 22, 1995 for low back pain with pain radiating to the left hip, diagnosed as L3-4 disc herniation with left L3 radiculopathy. Dr. Campbell reviewed appellant’s medical records “back to March 28, 1991 and at no time prior to June 22, 1995 was there any reference to lower back pain symptoms or signs of radiculopathy.”

In a March 31, 1997 report, Dr. Joy stated that appellant “clarified today that he suffered an injury on June 17, 1995 when he was pulling a wire cart,” but that appellant had not stated this at the June 21, 1995 examination as appellant believed his symptoms were related to a “kidney stone or spasm.” Dr. Joy opined that appellant’s low back symptoms “may have been related” to the work incident described “since he was pushing a heavy object, and apparently this accident was reported to his superiors ... it happened just before the symptoms appeared, and prior to that visit in June 1995 he had not complained of any leg pain.” Dr. Joy diagnosed left L3-4 foraminal disc herniation with left-sided L3 radiculopathy, and “[c]ervical spondylitic radiculopathy status post C4-C5 discectomy and fusion.”

By decision dated and finalized May 6, 1997, the Office hearing representative affirmed the Office’s May 2, 1996 decision, finding that there was no evidence of record that appellant reported the alleged June 17, 1995 incident to his superiors prior to August 30, 1995, and that the medical record did not mention the alleged incident until Dr. Joy’s March 31, 1997 report, causing doubt as to whether the alleged incident occurred. The hearing representative noted that as appellant “did not initially relate the problem to pulling a mail container it cause[d] doubt as to the significance of the event.” The hearing representative therefore concluded that appellant had failed to establish that “an injury was sustained in the time, place and manner alleged.”

The Board finds that appellant has not established that he sustained a herniated lumbar disc or degenerative disc disease in the performance of duty on or before July 24, 1995 as alleged.

To establish that a disease or condition was sustained in the performance of duty, a claimant must submit: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed;⁴ (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition;⁵ and (3) medical evidence establishing that the diagnosed condition is

³ Appellant also submitted a March 21, 1997 statement from an employing establishment supervisor, David Pearl. Mr. Pearl asserted that appellant was of good character and a hard worker, but did not address the alleged June 17, 1995 incident or other employment factors.

⁴ See *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁵ See *Walter D. Morehead*, 31 ECAB 188, 194 (1979). The Office, as part of its adjudicatory function, must make findings of fact and a determination as to whether the implicated working conditions constitute employment factors prior to submitting the case record to a medical expert; see *John A. Snowberger*, 34 ECAB 1262, 1271 (1983); *Rocco Izzo*, 5 ECAB 161, 164 (1952).

causally related to the employment factors identified by the claimant.⁶ The medical opinion must be one of reasonable medical certainty,⁷ and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁸

In this case, although the medical record substantiates the presence of a herniated L3-4 disc and degenerative disc disease, there is conflicting factual evidence as to whether these conditions occurred in the time, place and manner alleged.

The primary difficulty in establishing fact of injury in this case is that appellant's version of events changed significantly over time. In his August 30, 1995 claim form, appellant attributed his degenerative disc disease to heavy lifting, pushing and pulling while working at the foreign belt over a period of years, and not to a specific work incident. Also, appellant did not claim a herniated disc on this form. In his December 25, 1995 letter, appellant newly asserted that he felt pain in his left side while working the foreign belt on a single, unspecified date. Then, at the March 24, 1997 hearing, appellant alleged for the first time that he sustained a herniated lumbar disc on June 17, 1995 while pulling a mail container. With such widely varying accounts of events, it is not possible to ascertain the factual basis for appellant's claim.

Also, the factual evidence of record, except for appellant's own accounts, does not support the existence of a June 17, 1995 incident. On the reverse of appellant's August 30, 1995 claim form, Ms. Nesbitt, appellant's supervisor, indicated that appellant first notified her of the claimed condition on June 1, 1995, more than two weeks before the alleged June 17, 1995 incident. Ms. Nesbitt did not state that appellant verbally notified her of a June 17, 1995 incident, as he alleged. Ms. McCloskey, appellant's coworker, could not specify on what date she saw appellant grimace as he pulled a mail container. Mr. Flores, another coworker, recalled hearing appellant complain about back pain in June 1995, but did not specify a date, or allege that he personally witnessed appellant being injured. Thus, there is no factual corroboration of appellant's account of a June 17, 1995 incident either from his coworkers or supervisor.

Similarly, the medical evidence is insufficient to establish either a June 17, 1995 incident, or a causal relationship between any of the alleged work factors and the claimed conditions. Dr. Campbell, an attending Board-certified internist, submitted a June 22, 1995 report noting a two-day history of back pain without trauma, and diagnosed a back sprain. Dr. Campbell did not mention the alleged June 17, 1995 incident, to which appellant later attributed his condition, in reports from June 30 through July 27, 1995. Dr. Campbell's final report of record, dated March 27, 1997, also does not mention the alleged June 17, 1995 incident. As Dr. Campbell fails to mention any of the alleged employment factors, his reports are not based on an adequate factual history, and are therefore of insufficient probative value to establish fact of injury or causal relationship in this case.⁹

⁶ See generally *Lloyd C. Wiggs*, 32 ECAB 1023, 1029 (1981).

⁷ See *Morris Scanlon*, 11 ECAB 384, 385 (1960).

⁸ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁹ See *Cowan Mullins*, 8 ECAB 155, 158 (1955) (where the Board held that a medical opinion based on an incomplete history was insufficient to establish causal relationship).

Dr. Joy, an attending Board-certified neurosurgeon, noted in an August 21, 1995 report that appellant developed low back pain in mid June 1995 “while at work” and notified his supervisor. Dr. Joy diagnosed a herniated disc at L3-4 which he opined was “related to [appellant’s] work since his symptoms began while he was working.” However, Dr. Joy did not explain how any specific employment factors would have caused the claimed condition. Without such rationale, as well as an inadequate factual history, his general support for causal relationship is of little probative value.¹⁰ In a March 31, 1997 report, Dr. Joy related appellant’s account of a June 17, 1995 incident, which he opined might have caused appellant’s low back condition due to its temporal relationship to the onset of lumbar symptoms. This opinion is highly speculative, as it is based primarily on the apparent temporal relationship between unspecified work factors, and the newly alleged June 17, 1995 incident, and the onset of lumbar symptoms. The Board has held that the mere fact that a condition manifests itself during a period of employment does not raise an inference that there is causal relationship between the two.¹¹ A claimant must still present rationalized medical evidence to establish causal relationship.

Consequently, appellant has failed to meet his burden of proof as he submitted insufficient evidence to establish that the June 17, 1995 incident occurred at the time, place and in the manner alleged, or a causal relationship between any of the alleged factors of his federal employment and any medical condition.

The decision of the Office of Workers’ Compensation Programs dated and finalized May 6, 1997 is hereby affirmed.

Dated, Washington, D.C.
May 17, 1999

Michael J. Walsh
Chairman

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

¹⁰ *Lucrecia M. Nielsen*, 42 ECAB 583 (1991).

¹¹ *Norman E. Underwood*, 43 ECAB 719 (1992); *Edward E. Olsen*, 35 ECAB 1099 (1984).